

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr No. 98-252-MV

MICHAEL V. PEMBERTON,

Defendant.

MEMORANDUM OPINION AND ORDER

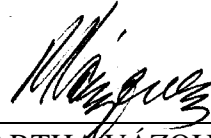
THIS MATTER is before the Court on the Government's Motion to Reconsider Court's Order Denying Government's Motion to Compel Defendant to Furnish Blood Sample Filed on August 5, 1998 [**Doc. No. 37**]. The Court, having considered the motion, relevant law, and being otherwise fully advised, finds that the Motion is well-taken and will be **GRANTED**, as explained below.

The Government has failed to provide the Court with any additional information which would persuade the Court that the Government does in fact have sufficient probable cause to support this invasion of Mr. Pemberton's body. However, defense counsel has indicated that it will not and does not oppose the Government's Motion to Reconsider. The Court must conclude therefore that the defense has changed its position and no longer opposes the blood draw. Accordingly, the Government's Motion to Reconsider will be granted and the Government will be permitted to draw blood from the defendant for the limited purpose of determining if blood found on the victim's and/or

defendant's clothing or at the scene of the alleged offense is consistent with the defendant's blood type or DNA.

IT IS THEREFORE ORDERED that the Government's Motion to Reconsider Court's Order Denying Government's Motion to Compel Defendant to Furnish Blood Sample Filed on August 5, 1998 [**Doc. No. 37**] is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Government may draw a blood sample from the defendant for the limited purpose of determining if blood found on the victim's and/or defendant's clothing or at the scene of the alleged offense is consistent with the defendant's blood type or DNA.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE

Attorney for Plaintiff:
Kathleen Bliss

Attorney for Defendant:
Roger Finzel